



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,334	04/09/2004	Michael M. Bellick	ARP 5588.1	9991

321 7590 06/07/2005

SENNIGER POWERS LEAVITT AND ROEDEL
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER

SPAHN, GAY

ART UNIT	PAPER NUMBER
----------	--------------

3673

DATE MAILED: 06/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/821,334

Applicant(s)

BELLICK ET AL.

Examiner

Gay Ann Spahn

Art Unit

3673

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s) _____
13. ☐ Other: _____


**HEATHER SHACKELFORD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600**

Continuation of 11. Request for Reconsideration

First, Applicants' argument that Garrigues (U.S. Patent No. 5,881,405) in view of Cantwell (U.S. Patent No. 6,175,976) fails to show or suggest a sleeping bag having "at least one vent in the overlying portion of the shell located adjacent the foot end of the shell" is not persuasive because the examiner disagrees that the vent of Garrigues is the V-shaped area on Applicants' Exhibit A (i.e., marked-up copy in Fig. 4 of Garrigues) enclosed with Applicants May 13, 2005 Request for Reconsideration. The examiner's position is that the Garrigues vent is a combination of the foot vent (40) and the vent duct (30) and since the vent duct (30) is on the overlying portion, the claim language is met.

Second, Applicants' argument that Basch (U.S. Patent No. 2,234,546) in view of Cantwell (U.S. Patent No. 6,175,976) fails to show or suggest "a vented sleeping bag having a closure selectively movable between a closed position for closing at least one vent and an open position for creating a vent opening" is not persuasive. Basch clearly discloses a sleeping bag (Fig. 6) having a closure (slide fastener 4) selectively movable between a closed position for closing at least one vent (shown in its open position in Fig. 6) and an open position for creating a vent opening. The fact that Basch does not disclose or suggest that the opening in the skirt portion 15 can be used as a vent does not mean that one of ordinary skill in the art would not recognize the the opening could well act as a vent. Furthermore, Applicants argue that there is no motivation to combine the side zippers of Cantwell with Basch because Basch zipper (4) already acts as a means on entry and egress. However, it is the examiners position that if the zipper (4) of Basch were used as a vent, then one would need an alternate manner of entry and egress and therefore, it would be well within the skill of one of ordinary skill in the art to modify Basch to include the side zipper of Cantwell to act as a means of entry and egress when the zipper (4) of Basch is functioning as a vent. Thus, the examiner disagrees that Basch teaches away from combination with Cantwell.

Third, Applicants argue that Schaye (U.S. Patent No. 2,622,248) does not teach or suggest a sleeping bag wherein the shell of the sleeping bag tapers toward the foot end when the vent closure is in a closed position. The examiner's position is that Fig. 6 discloses a shell of a sleeping bag which tapers toward the foot end of the shell.